

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	DOCKET NO. 2008-0273
)	
PUBLIC UTILITIES COMMISSION)	
)	
Instituting Proceedings to)	
Investigate the Implementation)	
Of Feed-in Tariffs.)	
_____)	

**CITY AND COUNTY OF HONOLULU'S RESPONSES TO QUESTIONS POSED BY
THE NATIONAL REGULATORY RESEARCH INSTITUTE ON BEHALF OF THE
PUBLIC UTILITY COMMISSION**

EXHIBITS "A" – "D"

AND

CERTIFICATE OF SERVICE

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COMMISSION

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INSTITUTE ON BEHALF OF THE PUBLIC UTILITY COMMISSION

The CITY AND COUNTY OF HONOLULU (City), by and through its attorneys, Corporation Counsel, Carrie K. S. Okinaga, and Deputy Corporation Counsel, Gordon D. Nelson, hereby submits its responses to questions and issues (other than threshold legal issues) by Commission consultant, National Regulatory Research Institute ("NRRI"), DATED March 2, 2009. The City respectfully reserves its right to further elaborate its responses in future submissions in this docket as may be appropriate.

Questions for the City and County of Honolulu

1. City and County of Honolulu or specific areas therein, do zoning regulations prohibit erection of small wind turbines, such as those 60 to 100 feet tall? If such regulations exist, please describe them.

RESPONSE:

Under the Land Use Ordinance (LUO), a wind turbine would fall within the definition of a "wind machine". Revised Ordinances of Honolulu (ROH), §21.5.700. A copy of that section is attached as Exhibit A. According to the Master Use Table (Table 21-3) of the LUO, wind machines are only permitted in certain zoning districts with a Conditional Use Permit (CUP) (i.e., the residential districts, the neighborhood and community business districts, and the limited and light industrial districts). The relevant excerpt from Table 21-3 is attached as Exhibit B.

Wind machines are not permitted in the Waikiki Special District and require a variance.

Although other special districts do not address wind machines specifically, many of them have objectives and guidelines designed to preserve and enhance the scenic, historic, and cultural aspects of the particular special district. They also include special provisions to protect the park-like setting, open space, view corridors, and historic structures. For example, under the special district regulations, wind machines would probably not be permitted along the slopes of Punchbowl or Diamond Head because they would have a significant visual impact on these scenic and natural landmarks. Also, wind machines would

probably not be permitted along established view corridor streets for many of the special districts (i.e., Chinatown Hawaii Capital, Punchbowl, Thomas Square/Honolulu Academy of Arts, Waikiki, and Diamond Head).

Wind machines might be permitted in other special districts depending on the underlying zoning districts.

Where permitted, the rated capacity of a wind machine is limited. See ROH §21.5.700 (b)(9), (c) and (d).

2. If zoning regulations restrict the height of wind turbines in the City and County of Honolulu or specific areas therein, what is the maximum height allowable in each location?

RESPONSE:

Generally, wind machines are exempt from the height limits. See ROH § 21-4.60, a copy of which is attached as Exhibit C. Although some special districts have maximum building heights which may be more restrictive than that of the underlying zoning district, the height exemption of ROH § 21-4.60 would still apply. Examples of special district height limitations are 65 feet for the Historic Precinct of the Hawaii Capital District, 40 feet for the Historic Core Precinct for the Chinatown Special District, 25 feet in the Core Area of the Diamond Head Special District. The height limit varies for the other special districts.

Although wind machines are generally exempt from the height limits, where permitted they are subject to a setback requirement. All wind machines must be set back from all property lines a minimum distance equal to the height of the system. See ROH § 21-5.700 (Exhibit A).

3. Please describe the process for obtaining variances for zoning regulations in the City and County of Honolulu or specific areas therein for erection of small wind turbines, such as those 60 to 100 feet tall.

RESPONSE:

The applicant must submit a complete Department of Planning and Permitting (DPP) master form application, including authorization from the fee landowner (if not the applicant), detailed plans (e.g., site plan, exterior elevation drawings, section drawings) sufficient for building permit purposes, justification statements, and filing fee. The director of the DPP must hold a public hearing for the variance request, and render a decision within 60 days from the date of the public hearing.

4. Please describe the criterion used to evaluate requests for variances for zoning regulations in the City and County of Honolulu or specific areas therein for the erection of small wind turbines, such as those 60 to 100 feet tall.

RESPONSE:

The criteria or the tests of hardship used to evaluate all variance requests are specified in the City Charter, Section 6-1517, a copy of which is attached as Exhibit D. Essentially, an applicant must show that he would be denied reasonable use of land and/or building; the request is due to unique circumstances; and the request would not alter the essential character of the neighborhood, or be contrary to the intent and purpose of the zoning ordinance.

5. Please describe any examples of variances being awarded for zoning regulations in the City and County of Honolulu or specific areas therein for the erection of small wind turbines or similar structures.

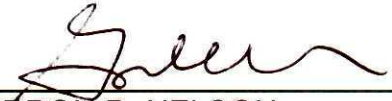
RESPONSE:

None.

DATED: Honolulu, Hawaii, March 16, 2009.

Respectfully submitted,

CARRIE K. S. OKINAGA
Corporation Counsel

By 

GORDON D. NELSON
Deputy Corporation Counsel
Attorneys for the City and County of
Honolulu

EXHIBIT A

Sec. 21-5.700 Wind machines.

(a) All wind machines shall be set back from all property lines a minimum distance equal to the height of the system. Height shall include the height of the tower and the farthest vertical extension of the wind machine.

(b) In residential zoning districts, in addition to the above, the following shall be applicable:

(1) Tower climbing apparatus and blade tips of the wind machine shall be no lower than 15 feet from ground level, unless enclosed by a six-foot-high fence and shall not be within seven feet of any roof or structure unless the blades are completely enclosed by a protective screen or fence.

(2) A public safety sign shall be posted at the base of the tower warning of high voltage and dangerous moving blades.

(3) The system base and rotor blade shall be a minimum of 15 feet from any overhead electrical transmission or distribution lines.

(4) Anchor points for guy wires for the wind machine shall be located within property lines and not on or across any overhead electrical transmission or distribution lines. Guy wires shall be equipped with devices that will, in a safe manner, prevent them from being climbed and shall be securely fastened.

(5) The applicant shall provide manufacturer's specifications which certify the safety of the machine;

provided, that the appropriate tower was used and proper installation procedures followed, as

outlined in the manual (6) The wind machine shall be operated so that no disruptive electromagnetic interference is caused. If it can be demonstrated to the director that the system is causing harmful interference, the operator shall promptly mitigate the interference.

(7) The system shall be kept in good repair.

(8) The system shall be deemed abandoned if not in continuous use for at least one year. Upon determination that the use is abandoned, the structure shall be dismantled and removed within 30 days upon written notice.

(9) The system shall be restricted to a rated capacity of no more than one kilowatt.

(c) In the agricultural and country zoning districts, accessory wind machines shall have a rated capacity of no more than 100 kilowatts. Wind machines with a rated capacity of more than 100 kilowatts shall require a conditional use permit (minor).

(d) In the business zoning districts, wind machines shall have a rated capacity of no more than 10 kilowatts.

(Added by Ord. 99-12)

TABLE 21-3

9.6(A) In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District, please refer to Table 21-9.6(A).

KEY	
=	Special accessory use subject to standards in Article 5
Ac	Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
Cm	Conditional Use Permit-major subject to standards in Article 5; public hearing required
C	Permitted use
P	Permitted use subject to standards in Article 5
P.c	Plan Review Use
PRU	

NO.	Plan Review Use	ZONING DISTRICTS
	(SES) (Note: Certain uses are defined in Article 10.)	
	P-2	
	AG-1	
	AG-2	
	County	
	R-20 R-10	
	R-7.5, R-5, R-3.5	
	A-1	
	A-2	
	A-3	
	AMX-1	
	AMX-2	
	AMX-3	
	Resort	
	B-1	
	B-2	
	BMX-3	
	BMX-4	
	I-1	
	I-2	
	I-3	
	IMX-1	

[illegible]

UTILITIES AND COMMUNICATIONS

[illegible]

MISCELLANEOUS

[illegible]

Where a proposed use is not specifically listed above, the director shall review the proposed use and, based on its characteristics and its similarity to the uses listed above, shall determine the regulatory requirements for that use.

EXHIBIT C

Sec. 21-4.60 Heights.

(a) All structures shall fall within a building height envelope at a height specified by this chapter or as specified on the zoning maps. Exceptions are specified under subsection (c), and others may be specified under special districts.

(b) The building height envelope shall run parallel to existing or finish grade, whichever is lower (see Figure 21-4.3), except where finish grade is higher than existing grade in order to meet city construction standards for driveways, roadways, drainage, sewerage and other infrastructure requirements, or to meet condition of permits approved under the provisions of this chapter. In these cases, height shall be measured from finish grade.

(c) The following structures and associated screening shall be exempt from zoning district height limits under the specified restrictions:

(1) Vent pipes, fans, roof access stairwells, and structures housing rooftop machinery, such as elevators and air conditioning, not to exceed 18 feet above the governing height limit, except that structures housing rooftop machinery on detached dwellings and duplex units shall not be exempt from zoning district height limits.

(2) Chimneys, which may also project into required height setbacks.

(3) Safety railings not to exceed 42 inches above the governing height limit.

(4) Utility Poles and Antennas. The council finds and declares that there is a significant public interest served in protecting and preserving the aesthetic beauty of the city. Further, the council finds that the indiscriminate and uncontrolled erection, location, and height of antennas can be detrimental to the city's appearance and, therefore, image; that this can cause significant damage to the community's sense of well-being, particularly in residential areas, and can further harm the economy of the city with its tourist trade which relies heavily on the city's physical appearance. However, the council also finds that there is a need for additional height for certain types of utility poles and antennas and that there is a clear public interest served by ensuring that those transmissions and receptions providing the public with power and telecommunications services are unobstructed. Therefore, in accord with the health, safety and aesthetic objectives contained in Section 21-1.20, and in view of the particular public interest needs associated with certain types of telecommunications services:

(A) Utility poles and broadcasting antennas shall not exceed 500 feet from existing grade.

(B) Antennas associated with utility installations shall not exceed 10 feet above the governing height limit, but in residential districts where utility lines are predominantly located underground the governing height limit shall apply.

(C) Receive-only antennas shall not exceed the governing height limit, except as provided under Section 21-2.140-1.

(5) Spires, flagpoles and smokestacks, not to exceed 350 feet from existing grade.

(6) One antenna for an amateur radio station operation per zoning lot, not to exceed 90 feet above existing grade.

(7) Wind machines, where permitted, provided that each machine shall be set back from all property lines one foot for each foot of height, measured from the highest vertical extension of the system.

(8) Any energy-savings device, including heat pumps and solar collectors, not to exceed five feet above the governing height limit.

(9) Construction and improvements in certain flood hazard districts, as specified in Sections 21-9.10-6 and 21-9.10-7.

(10) Farm structures in agricultural districts, as specified in Article 3.

(d) The following structures and associated screening may be placed on top of an existing building which is nonconforming with respect to height, under the specified restrictions:

(1) Any energy-savings device, including heat pumps and solar collectors, not to exceed 12 feet above the height of the building.

(2) Safety railings not to exceed 42 inches above the height of the building.

(Added by Ord. 99-12; Am. Ord. 03-37)

EXHIBIT D

Section 6-1517. Zoning Variances --

The director shall hear and determine petitions for varying the application of the zoning code with respect to a specific parcel of land and may grant such a variance upon the ground of unnecessary hardship if the record shows that (1) the applicant would be deprived of the reasonable use of such land or building if the provisions of the zoning code were strictly applicable; (2) the request of the applicant is due to unique circumstances and not the general conditions in the neighborhood, so that the reasonableness of the neighborhood zoning is not drawn into question; and (3) the request, if approved, will not alter the essential character of the neighborhood nor be contrary to the intent and purpose of the zoning ordinance. Prior to the granting of any variance, the director shall hold a public hearing thereon. The director shall specify the particular evidence which supports the granting of a variance.

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CERTIFICATE OF SERVICE

The foregoing document was served on the date of filing by electronic transmission on the date of signature to each of the parties listed below.

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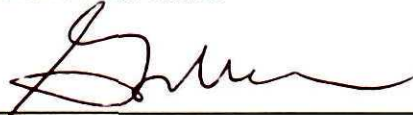
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DATED: Honolulu, Hawaii, March 16, 2009.

CARRIE K. S. OKINAGA
Corporation Counsel

By



GORDON D. NELSON
Deputy Corporation Counsel

Attorneys for the City and County of Honolulu